

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MAGDALENA TAVELLA,
ANDRES HORACIO FICICCHIA, GONZALO
GARCIA BLAYA, LUCIA MARIANA
HERNANDO, CECILIA DE LORENZO,
ADRIANA ROSA BAGATTIN,
DANIELA PATRICIA GOLDMAN,
MARIANO PABLO FERRARI, MARIANO
GRACIARENA, and
FERNANDO LOUREYRO,

Defendants.

Civil Action No. 13-cv-04609-
NRB

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION FOR AN ORDER
AUTHORIZING DISTRIBUTION AGENT TO DISTRIBUTE THE FAIR FUND TO
ELIGIBLE INVESTORS WHO FILED LATE CLAIMS AND ANY FUTURE ELIGIBLE
INVESTORS, APPROVING THE PAYMENT OF DISTRIBUTION EXPENSES AND
FUTURE DISTRIBUTION EXPENSES

The U.S. Securities and Exchange Commission (“SEC” or “Commission”) respectfully requests that the Court enter an Order authorizing the Distribution Agent, Kurtzman Carson Consultants, LLC (“KCC”), to distribute the Net Available Fair Fund¹ to additional Eligible Investors who filed late claims and any future Eligible Investors who may file late claims as provided for in the Distribution Plan approved by this Court on June 14, 2016, and authorizing the payment of distribution expenses and future distribution expenses incurred by the

¹ All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the approved Distribution Plan.

Distribution Agent without further order from the Court. The SEC has submitted a proposed order to the Court contemporaneously with the filing of this Motion.

I. Procedural Background

On July 3, 2013, the Commission filed a complaint alleging, *inter alia*, that Defendants violated Sections 5(a) and 5(c) of the Securities Act of 1933 by unlawfully selling almost \$34 million worth of securities in Biozoom, Inc. to the public as no registration statement was in effect for the Selling Defendants' resale of securities. The Commission sought an asset freeze covering the Selling Defendants' Biozoom shares as almost half of the ill-gotten profits had been transferred out of the United States and it was feared that unlawful sales of securities and transfer or dissipation of the securities was likely to continue.

On July 9, 2013 the Court entered a Temporary Restraining Order ("TRO") freezing the brokerage accounts of the Defendants holding Biozoom shares and any accounts held by financial institutions or brokers that have the proceeds of the Biozoom sales on behalf of the Defendants.

By order dated January 9, 2015, the Court entered Final Judgment against the Defendants pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and ordered the Defendants to pay the following amounts in disgorgement and civil penalties:

Defendant	Disgorgement	Civil Penalty	Total
Magdalena Tavella	\$3,107,819	\$160,000	\$3,267,819
Andres Horacio Ficicchia	\$1,948,339	\$160,000	\$2,108,339
Gonzalo Garcia Blaya	\$3,008,200	\$160,000	\$3,168,200
Lucia Mariana Hernando	\$5,042,771	\$160,000	\$5,202,771
Cecilia De Lorenzo	\$4,801,536	\$160,000	\$4,961,536

Adriana Rosa Bagattin	\$6,216,380	\$160,000	\$6,376,380
Daniela Patricia Goldman	\$3,764,306	\$160,000	\$3,924,306
Mariano Pablo Ferrari	\$5,447,450	\$160,000	\$5,607,450

Furthermore, in partial satisfaction of the amounts owed by Defendants, the accounts that were frozen pursuant to the TRO were ordered to be turned over. To date, the Commission recovered a total of \$16,117,935 from the frozen assets, which partially satisfies the total amounts in disgorgement and penalties order to be paid by the Defendants. It is doubtful that any additional finds will be recovered from the Defendants.

On May 18, 2015, the Court entered an order appointing Damasco & Associates, LLP to fulfill the tax obligations of the fund.

On August 25, 2015, the Court created a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for all funds received pursuant to the final judgments, and appointed KCC as the Distribution Agent to oversee the distribution of the Fair Fund to injured investors.

On June 9, 2016, the SEC filed a motion to approve a plan of distribution, together with the plan of distribution, and to transfer the funds received by the SEC to the Distribution Agent.

On June 14, 2016, the Court entered an order that approved the Distribution Plan and authorized the Commission to transfer the Fair Fund, less applicable fees, to the escrow agent established by KCC, for distribution in accordance with the Distribution Plan.

In February 2018, the SEC transferred \$16,243,218.56 to the Escrow Account established by the Distribution Agent pursuant to section 33 of the Distribution Plan. On April 19, 2018, KCC distributed \$16,018,358.62 to 2,585 investors (\$15,597,172 to 2,572 Individuals and \$421,186 to 13 Institutional Investors), leaving a remaining balance of \$224,859.90. After April

2018, KCC received late claims totaling approximately \$296,813.35 in Recognized Loss Amounts from seventeen (17) investors who claimed they were harmed. KCC consulted with SEC staff regarding these late claims and concluded that those investors were eligible to receive a distribution payment.

The Distribution Plan provides that the distribution of the Fair Fund shall be made to Eligible Claimants as provided under the terms of the Distribution Plan. An Eligible Claimant's Eligible Loss Amount, as determined in accordance with the Plan of Allocation contained in Appendix I to the Distribution Plan, was used to determine the amount of their Distribution Payment. Each Eligible Claimant will receive a *pro rata* share of the Fair Fund available for distribution. A Proof of Claim Form that is postmarked after the Claims Deadline will be marked as “late” and only accepted by the Distribution Agent, if after consulting with the Commission staff, the processing of these claims will not delay the distribution process.

II. Distribution of Fair Fund

A. Pursuant to the Distribution Plan and as set forth in the Declaration of Daniel J. Marotto attached hereto as Exhibit A (the “Declaration”), the Distribution Agent has prepared and submitted to the Commission staff a list of seventeen (17) Eligible Claimants, their approved Recognized Loss Amounts, and their *pro rata* Distribution Payments, all of which payments total approximately \$248,000 (the “Payment List”).²

B. The Declaration also sets forth the professional services fees KCC incurred from February 1, 2018 through January 31, 2019 as \$24,025.00, and the case-specific expenses as an additional \$7,467.84, and requests payment of the total professional fees and case-specific

² The Payment List will, upon request, be made available to the Court under seal.

expenses in the amount of \$31,492.84, and approval to pay estimated future professional fees and expenses of approximately \$15,798.25 without further order from this Court.

The Payment List and the Declaration have been reviewed by the undersigned counsel who has no objections and therefore requests the Court to approve payment.

WHEREFORE, for all the foregoing reasons, the Commission respectfully requests that this Court enter the attached Proposed Order and grant such other relief as the Court deems just and proper.

Dated: March 27, 2019

Respectfully submitted,

S/ Michael S. Lim

Michael S. Lim (Virginia Bar #76385)

Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2019, I caused the foregoing document to be electronically filed with the clerk of court for the U.S. District Court, Southern District of New York, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

S/ Michael S. Lim

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